(1) Supreme Court, U.S
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No. _____

In The
SUPREME COURT OF THE UNITED STATES

GERALD D. BUSH
CAROLYN BUSH
Petitioners,

v

ZEELAND, MICHIGAN
Respondent.

Pro se Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

---

PETTION FOR WRIT OF CERTIORARI

By:

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March 21, 2004

QUESTIONS

After years of malicious prosecutions, irreparable damages, harassment, deception, retaliation, obstruction of justice, under color of law, Respondent stole hundreds of items of personal property from Petitioners' private property under guise of nuisance. The district court, due to bias, imposed heightened standards on extension of time to serve, refused extension of time, ignored affidavits, dismissed and refused to act on motion for injunction, or protect Petitioners from further harassment and retaliation. Court of appeals evaded questions, rubber stamped district court due to bias. Both obstructed justice.

1. Whether in *pro se* appeal court of appeals finding that Carolyn Bush is not an appellant because she did not sign the notice of appeal, and its cited precedent, should be reversed where in conflict with FRAP Rule 3(c) and ***Becker v Montgomery***, 532 US 757 (2001)?

2. Whether this Court will assure *pro se* appellants the review to which they are entitled by the Constitution and laws on direct review and rehearing?

EXTEND TIME

3. Whether district court should be reversed where it acted without discretion, authority or jurisdiction imposing heightened standard for extension of time to serve defendants on FRCP Rule 4(m) and *pro se* civil rights plaintiffs and dismissed for not meeting heightened requirements?

4. Whether *pro se* petitioners' fundamental liberty interests in freedom of speech in judicial proceedings via affidavits, etc., attesting to bad faith, harassment, retaliation and obstruction of justice, including state judicial officials, were unjustly suppressed by district court?

5. Whether extension of time for service should have been granted *pro se* civil rights plaintiffs?

REMOVAL

6. Whether declaratory judgment should issue that state order (& all actions, orders taken thereafter in furtherance thereof) in state case obtained by Respondent from co-conspiring state judge after removal to federal court and before remand is void for lack of jurisdiction, Due Process and Equal Protection of law under the Supremacy Clause?

7. Whether Article III judges have a constitutional duty to protect *pro se* litigants asserting the right of removal from irreparable damages by state action taken without jurisdiction after removal and in hostility to federal law and removing party?

BIAS - OBSTRUCTION OF JUSTICE

8. Whether this Court should review allegations of judicial obstruction of justice and bias against *pro se* litigants during the course of judicial proceedings?

9. Whether the years of close association between the district court judge and court of appeals judges created impermissible probability of bias favoring district court and against *pro se*? (3-18-04, 7 am, revised 11:25 am)

10. Whether the record provides sufficient evidence of bias, resulting in obstruction of justice, by the district court or court of appeals, and, if so, what relief is available?

PRIVATE PROPERTY RIGHTS

11. Whether theft of private property by state violates Constitutional rights of citizens although not specifically prohibited by Constitution in those words?

PARTIES TO THE PROCEEDING

Petitioners Gerald and Carolyn Bush are *pro se* civil rights plaintiffs in the District Court and Appellants in the Court of Appeals. They are also defendants in the removed state case. They bring this action in their own behalf, but speak for the whole class of *pro se* litigants. Respondent, city of Zeeland, Michigan is the defendant. Respondent is the plaintiff in the removed state nuisance case.

Petitioners are not sure that Respondent is a proper party in this Court, since Respondent was not served and the case was dismissed before service was accomplished and it has not filed an appearance or participated in any of this litigation to date, despite being served with removal notices on Nov. 15, 2002 and thus having knowledge of the suit. Petitioners believe that decisions of the district court and court of appeals were sent to them by those courts.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Gerald and Carolyn Bush, on behalf of themselves and the oppressed poor and middle class property owners of America who are not represented by capable counsel, respectfully seek a writ of certiorari to review decisions of the 6th Circuit Court of Appeals and the District Court of the Western District of Michigan. Like most *pro se* litigants, Petitioners are rarely permitted a fair or just chance in the judicial system to have the merits decided by fair and impartial decisionmakers, therefore, this case is here on procedural grounds.

OPINIONS BELOW

The complaint (App A 1a) in this civil rights case was filed on August 8, 2002, after Petitioners as Defendants lost in a state nuisance case unjustly allowing the thief of their property and their *pro se* appeal by right was successfully obstructed and they were forced to appeal to this court. It was not immediately served on defendant (Respondent) because Petitioners wanted a capable, willing attorney to do it and because of harassment by Respondent and its agents.

The district court issued a Notice of Impending Dismissal with heightened standards for *pro se* plaintiffs to meet before extension of time would be granted. (App B, 3a) About the same time Petitioners removed a second state nuisance case to this file at the district court. Shortly thereafter, this case was dismissed for lack of service, despite Petitioners' motion to extend time, affidavit in support attesting to harassment, bad faith and retaliation by Respondents (App C, 5a) and to amend, in a memorandum opinion and order. (App D, 10a, E, 14a) Petitioners moved for reconsideration and reinstatement and submitted a longer more detailed affidavit. Their motion was denied without fully, fairly or justly addressing the issues or mention of the affidavit. (App F, 15a)

The 6th Circuit affirmed without fully or fairly addressing the issues or oral argument. (App G, 17a)

Petitioners motion for rehearing was likewise summarily denied. (App H, 22a) Petitioners are not aware of the publication of any of the above decisions.

JURISDICTION

Jurisdiction of this Court rests in 28 USC 1254. Petitioners claimed jurisdiction in the district court of this civil rights case under 42 USC 1983, 28 USC sections 1331, 1343, and 1651. (App A, 1a)

The decision of the 6th Circuit issued on Sept. 5, 2003 (App G, 17a) Rehearing was denied on October 23, 2003. (App H, 22a) Extension of time was granted by Justice Stevens to and including March 21, 2004. (App I, 23a) This case is timely under 28 USC 2107 and Rule 30(1).

CONSTITUTION, LAWS, & RULES INVOLVED

The Bushs' First Amendment rights of free speech, petition and access to court are at issue because the district court despised the content of their affidavits describing Respondent and state judicial bias, bad faith, harassment and extensive civil rights violations:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for redress of grievances." First Am.

4th, 5th, 14th Am. Due process and Equal Protection of the Law.

This suit was initially brought under 42 USC 1983. The Civil Rights Acts of 1871, 42 USC Sec 1983, says in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State *

> * * , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ."

Since Petitioners have been *pro se* from the start, 28 USC 1654 is also relevant and fundamental to review.

> 1654. Appearance personally or by counsel
> "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."

As to the prejudice of judges [and clerks]:

28 USC 47 "No judge shall hear or determine an appeal from the decision of a case or issue tried by him."

28 USC 144 In part - "Whenever . . . the judge . . . has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further . . ."

28 USC 453 Oath in part "I will administer justice without respect to persons, and do equal right [justice] to the poor and to the rich, and I will faithfully and impartially discharge and perform all the duties incumbent upon me ____ under the Constitution and laws of the United States. So help me God."

28 USC 455(a) "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be question." (Most of the balance is not real relevant.)

FRCP Rule 1. Scope and Purpose of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admirality, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

FRCP Rule 4(m) Time Limit for Service

If service of the summons and complaint is not made upon a defendant within 120 days after filing of the complaint, the court, upon motion, or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. (balance not relevant)

FRAP Rule 3 Appeal As of Right - How Taken

Rule 3(c)(2) A *pro se* notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

Removal statutes

28 USC 1441 Actions removable generally.

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court . . . "

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to citizenship or residence of the parties. (balance omitted)

28 USC 1446(d) states:

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect removal and the State court shall proceed no further unless and until the case is remanded.

28 USC 1447(c) states in part:

"A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case."

STATEMENT OF THE CASE

Summary of the Case

The complaint (App A 1a) in this civil rights case was not served on defendant (Respondent) within 120 days due to various circumstances. The district court issued a Notice of Impending Dismissal with heightened standards for *pro se* plaintiffs to meet before extension of time would be granted. (App B, 3a) Petitioners removed a similar state case to the district court. Shortly thereafter, this case was dismissed for lack of service, despite Petitioners' motion to extend time, affidavit in support attesting to harassment and retaliation by Respondents (App C, 5a) and to amend, in a memorandum opinion (App D, 10a) and order. (App E, 14a) Petitioners moved for reconsideration and reinstatement and submitted a longer more detailed affidavit. That motion was denied without fully, fairly or justly addressing the issues. (App F, 15a)

The 6th Circuit issued an opinion in a quick 6 months without oral argument that Petitioners believe violates Due Process and Equal Protection of Law because it is substantially less than full, fair or just. (App G, 17a) Petitioners motion for rehearing was likewise summarily denied. (App H, 22a)

I. FACTUAL BACKGROUND

Petitioners-Plaintiffs

Mr. and Mrs. Bush are property owners and live in the small town of Zeeland. They have lived here and raised their family for over 30 years. They have owned a retail business, rental property, a snowplow business, and 4 pieces of real estate, 2 zoned comercial and 2 zoned residential. Mr. Bush also taught auto mechanics and metal shop in the local schools. They have a poverty level income, a daughter in college, no health or dental insurance, drive 10-15 year old cars, and have no rent coming in from their rental properties. But the high taxes paid to Respondent continue with yearly increases.

For some time they were outspoken critics of Zeeland's unconstitutional ordinances, policies and unethical officials. As a result, the Bushs have long suffered violations of their constitutional rights, prosecutions for alleged property offenses and retaliation by Respondent, who believes there are no limits upon its authority, powers and jurisdiction and that it and its agents are under cover of "the King can do no wrong."

However, challenges to their actions seeking the relief and remedies available are always obstructed from justice by court officials - state and federal. Respondent's officials have stated to the Bushs they are attempting to force the Bushs out of town. Plus, one piece of the Bushs property, at issue here, they have been attempting to steal from the Bushs for almost 15 years. The history is very long, therefore the following is only a small part of recent relevant incidents. (See App C, 5a-9a)

The intent of this civil rights lawsuit was to recover from the theft of hundreds of items of personal porperty by Respondent and other violations of civil rights, liberties, privileges and immunities protected by the 14th Amendment. That has been obstructed by lower courts, just as the state case was when the Bushs were defendants in the so called nuisance suit. The judicial machine is broken.

Zeeland Practices & Policies

Zeeland is a Dutch founded community near Lake Michigan. Respondent is a local unit of government in the State of Michigan in the Western District. Here winters and snow are a fact of life. Respondents have a long history of bad faith, harassment, retaliation and violation of civil rights of the Bushs, and others. The Bushs have challenged them repeatedly, as defendants and civil rights plaintiffs.

Zeeland has a long history of hostility to Constitutional rights, oppression of civil rights by legislation and enforcement, harassment, bad faith and it has a tight relationship with Michigan judges, enough so that they are willing to obstruct justice in its favor. In fact, too much to detail here. But it has never been caught red handed oppressing civil rights, because of obstruction of justice.

Petitioner is not sure if respondent is part (has standing) of these proceedings or not. Respondent was not served with the complaint or summons. It was served with the notice of removal and they were sent copies of the various decisions by the district court and court of appeals. However, Respondent has never filed an appearance in either the district court or the court of appeals or actively participated. It appears to Petitioners, from the decision of the clerk on motion for extension of time to file the petition, that they are not entitled to notice or participation here.

Zeeland's Nuisance suit #1

Mr. Bush has been an outspoken critic of Respondent, its actions and its unethical officials because they violate Constitutional rights, are dictatorial and have no use for nonconforming people, their rights or liberties, especially in property ownership. (App C, 6a) Respondent has retaliated against Bush with many prosecutions for questionable, at least, ordinance violations. First to keep him quiet, but also to cause him and his wife to move out of

town, clearly because they challenge their authority and lack of integrity. (App C, 6a, #6)

Respondent has coveted for about two decades one of the Bushs commercially zoned properties with a house on it that the Bushs had rented out that sits adjacent to its municipal power plant - the last piece of 10 or so remaining not owned by the city. Previously, they have stolen a right of way for power lines across it from the Bushs by lies, deceptions, and threats. Respondent is a tightwad. It will not pay a fair price. Presently they are attempting to demolish the house under the illegal state order discussed below, allegedly because it doesn't meet their vague, unlawful and oppressive codes and ordinances.

After several unjust prosecutions and convictions under Respondent's ordinances, of dubious constitutionality, for various alleged offenses of having personal property on their private property outside of buildings - protected liberty and property rights (See App C, 5a-9a), Respondent brought a nuisance complaint against the Bushs in 1998. (Also a violation of Double Jeopardy.) seeking the state courts permission to take (steal) all their private property outside of buildings on all 4 pieces of property they owned within the city.

The biased state judge blocked every valid defense and granted relief, even though there was no statutory authority for his action. Plus, a higher court had ruled such ordinances unconstitutional in an unpublished opinion. (App C, 6a #9) Thus, with the state judge's approval, but while the Bushs motion for rehearing was still pending and without a chance to appeal by right, on August 9, 1999 Respondents and their agents stole large amounts of innocent (non-contraband *) personal property from Petitioners (App A, 1a, 2a; App C, 5a-9a) in violation of their constitutional rights and one of God's Laws in the 10 Commandments - "thou shall not steal," which Petitioners contend protects them from government under the 9th Amendment, if not elsewhere. (Note: For a listing of items taken from the Bushs, see former Police Chief's letter and

information detailing a long list of the items stolen from the Bushs in August, 1999 by the Respondent - the initial basis of the current suit - including business equipment, snowplows, trailers, trucks, cars, mowers, tools, antiques, etc. (Docket #10, Exh 3,) The titles of vehicles were jumped to other persons and sold and other things given away. The same has happened again as a result of the 2nd nuisance case discussed below.

(* ***Bennis v Michigan***, 516 US 442, 459 (1996) J. Stevens dissenting - automobiles not contraband subject to seizure citing ***One 1958 Plymouth Sedan v Pennsylvania***, 380 US 693, 699, (1965).)

Petitioners filed their appeal by right and paid extra for immediate emergency relief so that they might be able to get some of their property back, before it was sold and disposed of, but that was summarily denied by an unjust panel of the Michigan Court of Appeals. (App C, 7a) About a year later, the appeal was dismissed by the Chief Judge, without jurisdiction or authority, allegedly because of lack of transcripts, when the Circuit judge's court reporter refused to provide the two short (less than 4 hours total) transcripts. Motion for Rehearing before a 3 judge panel was obstructed by the same Chief Judge.(**) Appeals to the Michigan Supreme Court and this Court were denied leave. (App C 7a) (See ***Bush v Zeeland, Mich.***, Pet. #01-883 cert den, reh den)

(** In this nuisance case Petitioners were first obstructed from justice by Respondent's unethical attorney and the biased state judge (co-conspiring). Then Petitioners were subsequently obstructed from justice in their appeal by right by the same judge's court reporter who refused to provide transcripts. (App A, 2a; App C, 7a, #14) Then the Michigan Court of Appeals Chief Judge at the time, who because of anti-*pro se* and pro government prejudice, or personal prejudices against Mr. Bush who challenged teacher tenure legislation he had sponsored as a legislator, *sua sponte ultra vires* summarily dismissed the appeal instead of ordering the clerk to produce the transcripts or

ordering her to a show cause hearing. (App C, 7a) Subsequently, the Bushs sought relief from the Michigan Supreme Court and this Court without leave being granted. (Pet. 01-883; cert den, 122 S Ct 1075 (2002) See App A; App C, 5a-9a)

After being unable to appeal on the merits as Defendants, all the way to this Court, Petitioners filed this civil suit under 42 USC 1983 in August of 2002, just before the statute of limitations expired, seeking relief from the violations of the their constitutional rights resulting from the alleged nuisance suit by Respondents and the subsequent thief of their property.

This Federal Civil Rights suit, (42 USC 1983)

In August of 2002, after certiorari was denied, Petitioners filed the complaint in this lawsuit in federal court against Respondents, (App A, 1a) but did not immediately serve them for two reasons. (1) Because they know the federal district courts in the WD of Michigan are totally biased against *pro se* and in favor of government and their unethical attorneys, and, (2) therefore, most importantly, they still wanted an experienced, qualified, capable, and competent attorney to handle the case, as well as Mr. Bush's employment civil rights case (Pet. #03-830, cert den, 2004, reh pend. Both not allowed to proceed - obstructed - by the same district judge - Bell.)), but without much money to hire one*** and not finding a willing and capable one to do the job who wants to work in this biased, unjust, district.

(***The Bushs have been living at poverty level for a number of years, due to Mr. Bush not working and having to spend 1000's of hours per year on lawsuits that are habitually obstructed from justice, Mrs. Bush having limited employment caring for elderly persons, and their rental properties being unrented, but taxes continuing.)

Respondent's Nuisance suit #2 (removed)

Respondent, by its unethical attorney and in anticipation of Petitioner's federal lawsuit*, and in furtherance of their intentions to harass the Bushs in bad faith and without just cause, filed their second nuisance suit against the Bushs in the biased state courts, where they habitually get their unjust way. (*The Bushs have sued them 4 times before in Federal Court.)

This time, emboldened by their successes with biased state judges, they included claims that the Bushs two older rental houses were not up to their code (ex post facto ordinances, which they had no authority to enact otherwise) and under pretext of violation, demanded that the Bushs' spend huge amounts of money to fix pretextual insufficiencies or the city would and the amounts be added to their taxes. (Michigan citizens lose their property to the state and local government if the taxes are not paid within a short time (2-3?) years). Plus they demanded that again they be allowed to seize and sell or otherwise dispose of everything outside of buildings.

Petitioners had several objections to state jurisdiction and authority - no personal service, faulty service, wrong address, no authority or subject matter jurisdiction, etc., (See ***Old Wayne Mut. L. Asso. v McDonough***, 204 US 8 (1907) (no personal service & no appearance) and grounds, they felt, for removal. Furthermore, upon their request, Respondent was issued a default order granting them $0 in relief.**

(** However, after the Nov. 18, 2002 order came after the Bushs for $2350 in alleged attorney fees and subsequently invaded the Bush's privacy by demanding through a show cause hearing to know where they have bank accounts, who they worked for, under threat of contempt if not provided. After stealing 100% of the money from the Bushs bank accounts they then garnished 100% of Mrs. Bushs below poverty level self employment income received from taking care of a couple of old people and then demanded these 80+ year old people, who were very sickly, withhold 100% of her pay and pay it to them.)

Petitioners on November 14, 2002, after receiving notice of a state hearing scheduled for Nov. 18, 2002 to grant a requested order of injunction, removed the suit to federal court into this civil rights case by mailing Notice of Removal to both the federal court and the state court and sending copies to Respondent's attorney, since many of the issues were the same and their federal rights were being violated again in the same way.

The Notice of Removal was received and filed by the state court and federal court (and therefore, also the Respondent) on Nov. 15, 2002.

But, on Nov. 18, 2002, the Respondent and the state judge proceeded, without a moments hesitation, in hostility to the Notice of Removal, Constitutional rights, and federal law, to issue an *ex parte* order against the Bushs without even the Bushs having knowledge of the hearing continuing, appearing, or being present or having a chance to defend. (About this same time the 120 days for service is nearing its end.) On Nov. 19, 2002, Respondents served the order via their police officers by personal service on Mrs. Bush, but not Mr. Bush. Subsequently Respondent's police continued to harass the Bushs attempting to serve Mr. Bush and he had to avoid service of the unlawfully secured order in order to delay the 30 day time limit mandated to remove his personal property from his real property. Mr. Bush was served in a different state court when he was forced by a hearing to attend said court - in violation of state laws. (But the Respondent and its agents are above the law - "The King can do no wrong." ***Nixon v Fitzgerald***, 457 US 731, 766, 768 (1982) (J. White, dissent, and quoting CJ Brennan.)

(Note: Respondent and its agents have continued to enforce this unconstitutional and unlawful order to the present time and will continue to enforce it, unless prohibited by this Court. No other relief is available that Petitioners know of, since lower courts have refused to act to protect the Bushs from this irreparable damage, harassment and retaliation.)

II. PROCEEDINGS BELOW

Federal District Court

The Complaint was filed on August 8, 2002, the last day before the statute of limitations expired. (Docket #1, App A, 1a) (Note that during this time Mr. Bush was also dealing with his employment case with the same judge, see Western District of Michigan ***Bush v Zeeland Bd. of Ed***. DC #1-02-00565, Pet. #03-830, cert den, reh pend)

On about Nov. 14, 2002, a Notice of Impending Dismissal was sent to the Bushs. The Notice included several extra conditions that the district court demanded be met to qualify for extension of time that exceeded the requirements of Rule 4(m). (App B, 3a) Furthermore, the Notice erred on the 120 day calculation and shortened the time by 2 days. (Should have been Dec. 6, 2002.)

On Nov. 14, 2002, the same day, the Bushs mailed their Notice of Removal of the state action, etc., to the federal and state courts and to respondents attorney. They were filed in both courts on Nov. 15, 2002. (Docket #5)

On Nov. 18, 2002, Respondents and the co-conspiring state judge continued with their planned proceedings, without the Bushs. They easily got the biased pro government state judge to sign an order against the Bushs, allegedly for "injunctive relief," but without authority in law and against the Constitution, forcing the Bushs to do various things no one else in Zeeland has ever had to do and granting them money for attorney fees of $2350, which the Bushs did not have, and allowing arbitrary and capricious thief of all their personal property outside of buildings, including vehicles, lawn mowers, riding mowers, trailers, truck toppers, etc. on their properties, both commercial and residential.

The next day Respondent's police were knocking on the door serving Mrs. Bush. Thereafter the Bushs were being regularly harassed by police driving by and repeated attempts to personally serve Mr. Bush with the unlawfully gotten state court order.

On December 5, 2002, Mr. Bush moved the federal district court for extension of time for service, stay of impending dismissal and to amend the complaint. (Docket #6) In support, he submitted an affidavit attesting to a long history of continuing harassment and bad faith by Respondent, and exercised his right to free speech by expressing distrust of state judges born from experience. (Docket #7; See App C, 5a) It seems from the opinion below that the judge did not like that.

On December 11, 2002, the district court *sua sponte* in a memorandum opinion dismissed the case, allegedly for not completing service, remanded the removed state case alleging jurisdictional defects and spoke disparagingly of Mr. Bush. (Docket #8,9, App D, 10a, E, 14a) No weight or value was given to the affidavit at all.

On December 12, 2002, before the decision was received, Mr. Bush filed with the federal district court for Emergency Motion for Injunctive relief (Docket #10) against the state order taken after removal and another state action against him, after finding out via the personal service of the state order on Mrs. Bush that the state court had proceeded in violation of federal statutes regarding removal jurisdiction, because jurisdiction had by law moved to federal court.(Docket #10, 11) (See statutes cited above.)

The motion included as Exhibit 1, the state Injunctive Order; Exhibit 2, a separate state court order to Show Cause*; Exhibit 3, documents from the former Police Chief detailing a long list of the items stolen from the in August, 1999 by the Respondent - the initial basis of the current suit; Exhibit 4, an unpublished state court of appeals decision that such local ordinances are unconstitutional; Exhibit 5, an 11 page affidavit by Mr. Bush detailing bad faith, harassment and injustices by state courts in dealings with the Respondent and a two page signed letter by Mrs. Bush detailing harassment received on December 12, 2002. (See Docket #10, 11, Exh. 5, affidavit)

(* Mr. Bush had been ordered to remove 4 vehicles from one of his one pieces of commercial property if he wanted to avoid an unjust $450 fine for parking them there, which he did, because they didn't have the money and he has found it is impossible to win against unjust attorneys and unconstitutional ordinances in biased state courts. But the Respondent, by one of its unethical attorneys, was able to unjustly, and not in accord with the court's prior order, persuade the biased complicit state judge to order a Show Cause hearing and, by unjustly showing that Mr. Bush moved a couple of vehicles to another of his properties, which he had not been prohibited from doing, and that they were not licensed, force the Bushs to pay the $450, part of which Respondent gets. The outcome of the federal judge's refusal to act was Mr. Bush had to pay a $450 fine a couple days before Christmas or go to jail. Appeal would be to the unjust circuit court judge who acted in hostility to federal removal statutes or his equally unjust counterpart and cost another $150, plus transcripts, etc.)

The above last two docket entries crossed in the mail.

Subsequently, however, the district court did absolutely nothing (deliberately) with the motion for injunctive relief, even though there is no doubt it was filed.

On December 23, 2002, the Bushs filed a Motion to Reconsider and to Reinstate the case. (Docket #12) Specifically, they requested the court decide the motion for injunctive relief against the removed state action.

When the district court still did not respond and since Petitioners have little faith in the ability of judges to follow the law and know only too well their tricks to obstruct justice, Mr. Bush filed their Notice of Appeal within 30 days of the initial district court decision on Jan. 13, 2003. (The Bushs believe the district court would have permanently pocket vetoed their motion, as he had done, until the time to appeal was passed, thereby creating

timeliness issues for them on appeal, and thus successfully obstruct justice in the case.)

- On Jan. 14, 2003, the district court summarily denied their motion for reconsideration. True to form, again the district court *deliberately avoided* answering the questions. (Docket #15, App F, 15a) Instead he focused only upon the "failure to serve the defendants or to offer any plausible excuse for their failure to do so." (App 15a) (Note: Petitioners believe this is another instance of willful obstruction of justice by this judge. Petitioners believe, and believe they can prove, the district judge has triple bias - against *pro se* and for government and their unethical attorneys and obstruction of justice is the unjust result.)

Court of Appeals

Mr. Bush timely filed the appeal, on behalf of Mrs. Bush and himself in accord with FRAP Rule 3(c)(2) and briefed the issues. Question 1 challenged the district court's refusal to give weight or authority to the two affidavits they filed. (Briefed at p 10-15) Question 2 challenged the denial of extension of time to serve defendant. (Briefed at p 15-18) Question 3 challenged the district court's time calculations. (Briefed at p 15-16) Questions 4 challenged the district court's imposition on Rule 4 and *pro se* litigants the heightened standards for extension of time to serve. (Briefed at p 16-17) Question 5 challenged the district court's refusal to enjoin the removed state court order obtained without jurisdiction. (Briefed at p 18-20) Question 6 requested a decision on whether the state order made without jurisdiction was void on federal law and supremacy grounds. (Briefed at p 20-22) Question 7 challenged the district court's lack of action on the requested injunction and insisted *pro se* litigants have a right to action on their motions. (Briefed at p 22-24) Question 8 requested a ruling on district court bias against *pro se* litigants evidenced by the refusal to rule and fully, fairly and justly to consider their pleadings. (Briefed at 22-24) Question 9 requested that some direction and opportunity be provided to prevent

unethical government attorneys from harassing them. (Briefed at p 24-28)

None of these questions were addressed, answered or even mentioned. As habitually happens at the 6th Circuit, *pro se* nonattorney appellants are denied the right to speak personally to the court of appeals via oral argument. (App H, 18a)

Specifically, the court of appeals deliberately avoided the questions raised by Petitioners as whether the district court had imposed a heightened standard on extensions of time to serve defendants. (See App 18a) They noted, however, the Notice of Impending Dismissal. (App 18a) (But see App B, 3a and compare.) (See Rule 4(m) above at p 4)

Furthermore, they refused to address the Bushs' question as to whether the Notice erred as to the due date, and continued to apparently maintain the December 4, 2002, date is correct. (App 18a)

Surprisingly, they did acknowledge that the Bushs had moved for extension of time and stay. (See App 18a) They also acknowledged the removal of the state case to federal court. (App 18a) and the Bushs motion for reconsideration. (App 19a) However, they do not include or address the Bush's motion for injunctive relief at the district court, which was intended to halt the unjust state order granted without jurisdiction.

But then, *sua sponte*, the C/A raised the issue of whether or not Mrs. Bush is a valid appellant, because she did not sign the notice of appeal. (App 19a) In doing so, they overrule FRAP Rule 3(c)(2), which clearly includes Mrs. Bush as an appellant and cite cases implicitly overruled by ***Becker v Montgomery***, 532 US 757 (2001).

After avoiding the heightened standard issue, they contend they apply an abuse of discretion standard to the dismissal. (App 19a) But no district court has either discretion, jurisdiction, or authority to impose a heightened standard on the FRCP, thus, an abuse of discretion analysis

is totally unjust as matter of law. The district courts decision is void. See _____

The only discretion the district court had - over the extension of time motion - it violated by adding conditions and requirements not in FRCP Rule 4(m). At most it only had discretion to decide whether "good cause" was shown, if that. Not whether its preimposed conditions were met. Petitioners assert they provided ample good cause. Alternatively, they believe that no good cause, need be shown and, since others have been granted extension on that basis, they deserve Equal Protection of the Law on that right.

The C/A concluded that: "Plaintiffs' motion and affidavit were insufficient to show good cause." (App H, 20a)

It is clear, but not surprising to Petitioners, that the C/A then upheld the district court's heightened standard imposed on Rule 4. It states: "The affidavit did not disclose any effort, however minimal, by the plaintiffs to effect service of process on the City." (App 20a) (See App D, 12a) This is a new requirement, not even contained in the Notice for Impending dismissal. (See App B, 3-4a) And certainly not in Rule 4(m).

They lastly conclude, by twisting, distorting and avoiding the removal issue, by finding that the remand issue is not reviewable on appeal. (App 20a) Whether that is true or not, the issue has been unjustly twisted and distorted. The real issue is whether the state court order was issued without any jurisdiction - after removal - is valid or void, according to federal law. That is the issue the biased pro government, pro district judge C/A avoided, as did the district court itself on two different occasions. (Petitioners sincerely and fully believe these are acts of deliberate anti-*pro se* prejudice and pro judge prejudice.)

Rehearing

The Bushs timely moved for rehearing, which the C/A denied summarily on Oct. 23, 2003, contending they

"did not misapprehend or overlook any point of law or fact . . ". (App H, 22a)

On rehearing, two questions were asked. First, they attacked the panels ruling on lack of subject matter jurisdiction of the removal and raised issues of vagueness, arbitrary, capricious, First Am. and Due Process. (Briefed at p 2-4)

The second question again addressed the refusal of the courts (district and court of appeals) to accord any weight or value to the *pro se* plaintiffs affidavits. (Briefed at p 4-6) As the Bushs have come to expect, the biased C/A ignored everything they had to say and ruled against them. The C/A denied summarily on Oct. 23, 2003, contending they "did not misapprehend or overlook any point of law or fact . . ". (App H, 22a)

It doesn't take much to affirm a justice obstructing district court when the court of appeals is willing to overlook 100% of the *pro se* questions, the law in briefed materials and then twist and distort the issues to satisfy its desire and prejudices toward a district judge they consider to be a friend, associate and brother of the black robe.

The irreparable harm and costs to the Bushs, however, has been quite substantial. Too extensive to detail here.

REASONS FOR GRANTING THE PETITION

1. THE RULING THAT MRS. BUSH IS NOT AN APPELLANT CONFLICTS WITH RULE AND PRECEDENT AND SHOULD BE REVERSED

The Court of Appeals excluded Mrs. Bush's appeal in this case because she did not sign the notice of appeal. (See App G, 19a) It cited *Torres v Oakland Scavenger Co.*, 487 US 312, 317-318 (1988) and a 6th Cir. precedent, but did not reference ***Becker v Montgomery***, 532 US 757 (2001). Petitioners believe the decision is in total conflict with both ***Becker*** and FRAP Rule 3. Based on the Supremacy Clause, ***Becker***, and the Rule, this Court should reverse. Plus it would seem that the People have a right to accurate precedents under the Constitution, especially where their fundamental rights are concerned.

FRAP Rule 3(c)(2) specifically allows Mr. Bush to file the claim of appeal for his spouse and children, if parties. (See p 4)

Furthermore, ***Becker, supra***, a case of a single appellant, unanimously held that not signing the notice of appeal was not a jurisdictional defect, but was a correctable error. The same could have been done here, accept that Rule 3 prevails.

This *sua sponte* court of appeals decision demonstrates further their absolute prejudice against *pro se* litigants.

A unanimous Court held in ***Torres***, citing ***Foman***, that "the requirements of the rules of procedure should be *liberally construed* and that `mere technicalities' should not stand in the way of consideration of a case on its merits." ***Id.***, US at 316-317. (emphasis added)

(Fn ***Torres*** is distinguish from this case by two facts. One, the appellant's name was not listed anywhere. Two, the case was by attorneys, therefore, appellants did not have to sign the notice of appeal. In this appeal, there is no dispute, Mrs. Bush was listed. But she had not signed the notice of appeal.)

But the decision in this case, that Mrs. Bush is not a valid appellant, is in direct conflict with FRAP Rule 3.

2. *PRO SE* PETITIONERS WERE DENIED A CONSTITUTIONAL APPEAL

Petitioners believe they were denied a full, fair and just review and decision on the merits of the questions they raised on appeal by right. In fact, Petitioners believe justice was deliberately obstructed.

In ***Hicks v Miranda***, 422 US 332, 344, 45 L Ed 2d 223, 95 S Ct 2281 (1975) this Court stated:

> "A federal constitutional issue was properly presented, it was within our appellate jurisdiction . . . and *we had no discretion to refuse adjudication of the case on its merits* . . " * * * " . . . we were required to deal with its merits."

The question here is whether federal (and state) courts of appeal (and district) have an identical obligation, and if so, whether in *pro se* cases they may be denied the right to a full and complete decision on the merits because of their inferior representation and typically low class in American society. Obviously, Petitioners believe the same standard should apply to all courts - state and federal - and to all litigants. But Mr. Bush has found that *pro se* litigants seldom, if ever, receive just decisions on the merits by either state or federal appellate courts. This case is a one prime example. (See of recent vintage ***Bush v Zeeland Bd of Ed***, Pet. #03-830.)

This court should be able to tell that the court of Appeals *did not answer any of the questions raised* from the Statement of the Case. (See above at P 16-19) That can be confirmed by the record.

That is not the kind of appeal the Founders, the Constitution, Congress, this Court or the People ever intended. For these reasons review should be granted.

3. JUDGES LACK DISCRETION, AUTHORITY AND JURISDICTION TO IMPOSE HEIGHTENED STANDARDS ON *PRO SE* LITIGANTS AND RULES

Petitioners believe the district court imposed heightened requirements on Rule 4(m) for *pro se* plaintiffs to extend time for service without discretion, authority and jurisdiction, therefore, the decision should be reversed. Furthermore, it appears to violate rights under 28 USC 1654, and the 14th Amendment.

The multiple conditions for extension of time, as demanded by the district court, are clearly spelled out in the Notice of Impending Dismissal received by the Bushs. (See App B, 3a) The issue was raised on appeal, but the court of appeals deliberately avoided the issue, because it was dispositive reversible error. (App G, 17a - 21a)

Petitioners raised the extension of time and heightened standard at the court of appeals. See Appellants Brief Questions 1-4, and Bf p 10-18. Furthermore they raised the issue of judicial prejudice. Question 5, Bf p 22-24. The C/A did not address any of the issues because, Petitioners believe, dispositive reversible error would violate their inherent prejudices in favor of the district court and against *pro se* litigants. (App G, 17a - 21a)

Petitioners believe these requirements substantially exceed the "good cause" condition of Rule 4(m) and substantially restrict the rights of plaintiffs and favor defendants - the government & its agents - unjustly protecting them from legitimate lawsuits and taking responsibility for violating Constitutional rights.

District courts have no discretion, authority, or jurisdiction to create rules or add to them that Petitioners are aware of. Therefore, the heightened standards imposed by the district court on FRCP Rule 4(m) to extend time for service are void.

> "Courts are constituted by authority and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention

> of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal. ***Elliott v Peirsol***, 1 Pet. 328, 340, 7 L ed 164, 170; ***Old Wayne Mut. Life Asso. v McDonough***, 204 US 8, 51 L Ed 345, 27 Sup Ct Rep 236." ***Galveston, H&SAR Co. v Woodbury***, 254 US 357, 353-354 (1920).

Plus, heightened standards in other instances have been overruled. In ***Crawford-El v Britton***, 523 US 574, 118 S Ct 1584, 140 L Ed 2d 759 (1998) (a *pro se* case) the Supreme Court held that a lower court had *erred in fashioning a heightened burden of proof* for unconstitutional-motive cases against public officials in 42 USC 1983 cases. They held that this undermined sec 1983's very purpose - to provide a remedy for the violation of federal rights. See also ***Leatherman v Tarrant County Etc.***, 507 US ____, 122 L Ed 2d 517, 113 S Ct 1160 (1993); also ***Glover v US***, 121 S Ct 696, 148 L Ed 2d 604, 611 (2001) (holding that 7th Cir "*erred in engrafting this additional requirement . .* ").

In addition, this Court has stated its intent that the Rules be uniformly interpreted. ***Becker v Montgomery***, 532 US 757 (2001) (unanimous). Secondly, the limited capacity to make rules does not extend to every individual judge independently.

For these reasons this Court should decide these important issues.

4. THE CONSTITUTION PROTECTS SPEECH IN COURT AND RETALIATION BY SHOULD NOT BE ALLOWED

In this case as has been shown, the district court ignored the two affidavits filed in the case.* The 6th Cir. refused to address the question. (A pocket veto.)

The first affidavit was quickly made and filed in support of the motion to extend time, but it also supported the complaint. (See App A, 1a and App C, 5a) Furthermore, it detailed state injustices, which the district court likely

objected to, because of his bias and propensity to protect civil rights violating state governments.

Their second affidavit was filed in support of their Emergency Motion for Injunction. (Docket #10, App. 5) It expanded upon the first, by adding more information about Respondents harassment, bad faith, retaliation, and obstruction of justice, etc.

These affidavits were "uncontroverted." See ***Maki v Laakko***, 88 F.3d 361 (6th Cir 1996) Fn 1. Therefore, they should have, at least, been referenced and counted for something. (For whatever else this Court can decide.)

On appeal the first question raised the issue of ignoring the Bushs affidavits and it was briefed. (Appeal Bf, p 10-15) The Bushs argued that strict scrutiny should apply because the judge was unjustly suppressing their First Amendment right of free speech and retaliating against them because of their speech and *pro se* status. They also argued that his inaction violates their right of Equal Protection. They add here that he also violated their right of Due Process and Privileges as citizens to sue the state government for redress of grievances, as protected by the 14th Am. The court of appeals ignored all of it.

Petitioners are of opinion that if this Court is going to continue to allow district judges to grant summary judgment and other relief to fully guilty government defendants on the basis of their affidavits, yet allow civil rights plaintiff's affidavits to be ignored whenever the judges feel like it, it had better come up with some strong enforcement tools for civil rights plaintiffs or otherwise abandon the affidavit business altogether and resume the commands of the 7th Amendment and the Founders practices of presenting cases to impartial juries.

(* Note: In ***Bush v Zeeland Bd of Ed***, decided by the same district judge at about the same time, the judge deliberately ignored 3 affidavits submitted by Mr. Bush before and after granting summary judgment. On appeal, the 6th Cir. clerk obstructed justice by dismissing the appeal without

authority or jurisdiction. See Petition for writ of certiorari #03-830, cert den, reh pend)

5. THE REMOVED STATE COURT ORDER SHOULD BE DECLARED VOID.

The Bushs have suffered, and are still suffering, and will suffer, substantial irreparable harm as a result of the state court order obtained after removal and before remand, thus without jurisdiction.

There is no doubt that the order was obtained after removal and before remand as stated above in the facts. Federal law holds that it was made without jurisdiction. The removal statutes state it is removed upon filing. See 28 USC 1446(d). 28 USC 1447(c) confirms.

Under the Supremacy Clause, Due Process, Equal Protection, etc., the order should be declared null and void. This Court should so state.

6. EXTENSION OF TIME SHOULD HAVE BEEN GRANTED

Petitioners clearly attempted to extend time to serve Defendants. (See Docket #6) In support they submitted the affidavit of Mr. Bush. (Docket #7, App C, 5a) The district court acknowledges as much, though vaguely and disparagingly, consistent with his multiple prejudices. (App D, 10a) The affidavit indicates some of the circumstances the Bushs faced as their 120 day time to serve came to a close and a bit of the history of Respondent's harassment and bad faith they endured. (App C, 5a-9a)

Rule 4(m) clearly allows extension of time for "good cause." Plus, good cause need not be shown in some instances, as this Court noted in regards to Rule 4(m):

> "Most recently, in 1993 amendments to the Rules, courts have been accorded discretion to enlarge the 120-day period *`even if there is no good cause shown.'* See Advisory Committee's Notes on Fed. Rule Civ. Proc. 4, 28 U.S.C. App., p. 654." ***Henderson v US***, 517 US

654, 662-663, 134 L Ed 2d 880, 116 S Ct 1638 (1996) (emphasis added).

Petitioners believe without doubt that the district court judges of this district are prejudiced in favor of state government and against *pro se* litigants, and that the goal here was to obstruct a case that could be won on summary judgment. Denying extension and dismiss were the vehicles to accomplish that goal.

Petitioners also believe that they have shown substantial good cause, but, alternatively, they believe extension should have been granted under the "no good cause" standard for consistency. See ***Becker, supra***.

The affidavit submitted in support of extension of time was hastily prepared and not all that could have been submitted. During the last few weeks after removal Mr. Bush was being harassed and chased about by Respondent via its agents for weeks. The motion was made and submitted within 24 hours, after Mr. Bush found the letter of impending dismissal. (App C, 8a-9a) A later affidavit submitted to the district court is much more comprehensive description of some of the bad faith, harassment and obstruction of justice the Bushs have faced in biased state courts. The district court detested this free, truthful and whistleblowing speech to the point of suppressing the whole case by dismissal under pretext.

Respondent has evaded service in a prior civil rights suit by other means and prevailed. Respondent received notice by waiver (Rule 4(d)) but refused to sign or acknowledge same until the time to serve expired and then moved to dismiss. An equally prejudiced judge granted dismissal. (See ***Bush v Donkersloot, et al.***, W. Dist. Mich. #1:97-cv-51, dec. 10-17-97) Evading service, equals evading accountability. Evasion of service and responsibility in this case by harassment - judicial, police and other agents - is consistent with their modus operandi.

CONCLUSION

The states should not be stealing the assets of the People, nor should they be violating liberties and obstructing justice, but they are. The 14th Amendment was passed specifically to prevent them from violating fundamental protected rights, but without just and fair judicial enforcement, those rights are not worth the paper they are written on.

Obviously more could be said, but the Bushs believe sufficient obstruction of justice in the course of judicial proceedings and other reasons have been presented for this Court to review the case. They respectfully request the case be accepted for review and decisions made on the questions presented and that Justice be done.

For the Petitioners:

March 21, 2004

Gerald Bush
724 E. Central
Zeeland, Mich. 49464
616-772-2398

APPENDIX

DISTRICT COURT

Appendix A Complaint (Aug.8, 2002) 1a

Appendix B, Notice of Impending Dismissal, (Nov. 14, 2002) 3a

Appendix C Affidavit in support of extension of time. (Dec. 2002) 5a

Appendix D, Memorandum Opinion, (Dec. 11, 2002) (CJ Bell) (deny Pl. Mot. extend time to serve, dismissal and remand removed state case.) 10a

Appendix F, Order of Dismissal and Remand, (Dec. 11, 2002) (CJ Bell) 14a

Appendix D Order Denying Mot. Reconsider (Jan. 14, 2003) (CJ Bell) 15a

SIXTH CIRCUIT ORDERS

Appendix G, Order (Sept. 5, 2003) 17a

Appendix H, Rehearing (Oct. 23, 2003) 22a

SUPREME COURT

Appendix I Extension of Time 23a

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Gerald Bush,
Carolyn Bush
Plaintiffs

v

City of Zeeland, et al,
Defendants

Gerald Bush &
Carolyn Bush
724 E. Central
Zeeland, Michigan 49464
616-772-2398

Civil action # 1:02-CV-0565
Robert Holmes Bell
Chief District Judge

(stamped) Filed-GR
02 Aug - 8 PM 4:54
Ronald Weston, Sr. Clerk
U.S. District Court
Western District Mich.

Jury Trial (hand written)

COMPLAINT FOR DECLARATORY AND OTHER RELIEF

1. This suit concerns continuing violations of Plaintiffs' Gerald and Carolyn Bushs' Constitutional and civil rights by Defendants.

JURISDICTION

2. The District Court has jurisdiction under 28 USC sections 1331, 1343, 1651 and 42 USC 1983.

PARTIES

3. Plaintiffs Gerald and Carolyn Bush are residents of the City of Zeeland, Ottawa County, Michigan, USA and own 4 properties therein. Two properties are commercially zoned and two are residentially zoned.

4. Defendant City of Zeeland is a subdivision of the State of Michigan.

FACTS

5. Defendant City of Zeeland has repeatedly violated Plaintiffs right by the following actions. They brought unconstitutional and unlawful charges against Plaintiffs pursuant to its ordinances for storing unlicensed vehicles and other items on the Bush's private property outside of buildings.

6. The Bushs pro se have defended on various valid grounds, but could not prevail on any. They paid fines and fees.

7. Then the City and some of its agents initiated a new action in Ottawa County Circuit Court to seize vehicles from the Bush's properties and other private items owned by the Bushs from their 4 pieces of private property. The action was not grounded in any authority.

8. In spite of the Bushs' substantial defenses at least 18 vehicles and other items were ordered seized by Defendants. On August 9, 1999 they were seized, then disposed of or sold.

9. Plaintiffs attempted appeals pro se, but were obstructed by various state officials, including the court reporter who denied them transcripts even though the Bushs were willing to pay for them.

10. Plaintiffs seek declaratory, injunctive, monetary and other forms of relief.

Wherefore, Plaintiffs pray that judgment be entered in their favor and against Defendants, individually and severally, for an amount to make them whole.

Plaintiff hereby reserves all rights to amend this complaint.

August ___, 2002

/s/ Gerald Bush
Gerald Bush

/s/ Carolyn Bush (GB)
Carolyn Bush

APPENDIX B

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICIEGAN
SOUTHERN DIVISION

GERALD BUSH, et al.,
Plaintiffs, Case No. 1:02-cv-565
V. Honorable Robert Holmes Bell
CITY OF ZEELAND, et al.,
Defendants.

NOTICE OF IMPENDING DISMISSAL

The court records indicate that more than 90 days have passed from the filing of the above complaint and defendants have not been served. This notice serves to inform plaintiffs that the action shall be dismissed without prejudice, unless plaintiffs complete service of process within 120 days after the filing of the complaint, in accordance with FED. R. Civ. P. 4(m).

To avoid dismissal pursuant to Rule 4(m), if more than 120 days are necessary for service of process, plaintiffs must execute a verified Petition Re: Service of Process, advising the court:

A. That the case should not be dismissed as to the unserved defendant;

B. That the failure to obtain service upon this defendant is not due to the fault of the party or his counsel seeking to avoid dismissal;

C. The reasons why the case against the unserved defendant should not be dismissed, set forth in detail; and

D. That service will be effected on the defendant within thirty (30) days of the date of the petition.

The petition must be filed with the court on or before **December 4, 2002**. By executing the Petition Re: Service of Process, you need not appear in support thereof until and/or unless so notified by the court. If the court is satisfied that the case should not be dismissed as to the unserved defendant, you will be so notified. If dismissal of the case as to the unserved defendant is satisfactory to you, no action is required and an order of dismissal shall be issued.

DONE AND ORDERED this 14th day of November, 2002.

/s/ Joseph G. Scoville
United States Magistrate Judge

TRUE COPY
SIGNED ORIGINAL FILED
ELECTRONICALLY
Ronald C. Weston, Sr., Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Gerald Bush,
Carolyn Bush
Plaintiffs (& state Defendants)

Civil action #1:O2 CV 0565
v Judge Robert H. Bell

City of Zeeland, et al,
Defendants (& state Plaintiffs)

Gerald Bush &
Carolyn Bush
724 E. Central
Zeeland, Michigan 49464
616-772-2398

AFFIDAVIT OF GERALD BUSH
IN OPPOSITION TO PENDING DISMISSAL

STATE OF MICHIGAN)
)ss
COUNTY OF OTTAWA)

NOW COMES Gerald Bush in this matter, and upon being first duly sworn, states:

1. I am pro se. I am submitting this affidavit in opposition to the Court's Pending Dismissal notice dated 11-14-02. If sworn as a witness I can competently testify to the matters set forth herein based on my own first-hand knowledge, with the exception of those matters which I state to be upon information and belief. This is not intended to be a comprehensive listing of facts of the past 10 years of discrimination or harassment by the City of Zeeland, its

Administrators, Police, etc. It is more or less limited to facts to a few relevant instances of injustice in the state proceedings and discrimination instances by Defendants or its agents. Zeeland and the Bush's have had many, many disputes in the last 10+ years. The Bush's have always been the losers.

2. My wife, family and I are living at poverty level because of gross discrimination and abuses of the Constitution and laws by my former employer Zeeland Public Schools, who we are also in this Court with. (See Civil No. 1:01 CV 672)

3. This is an important case that involves substantial Constitutional rights, the 1st, 4th, 5th and 14th Amendments involving protected speech, double jeopardy, seizure, Due Process, Equal Protection, Privileges and Immunities and retaliation for speech, lawsuits and aggressive defenses, etc.

4. I have been to city counsel meetings and other meetings contending that some of their ordinances and proposed ordinances were unconstitutional.

5. Subsequently, in the past 10 years they have repeatedly prosecuted us, 10 or more times, for having cars or other things on our private properties that they do not like. We have vigorously fought them.

6. The Zeeland City Attorney, James Donkersloot, said several years ago that the City of Zeeland is trying to force us out of town.

7. The City of Zeeland has engaged several unethical attorneys and agents in order to prevail on its goals of harassing the Bush's out of town and silencing their criticisms.

8. In about 1998 the City hired attorney Ken Breese to harass us in various different ways, one being to seize our vehicles and other property items and sell them for the City's benefit.

9. In 1999 the City accomplished this unconstitutional goal by unethical and unconstitutional means. A suit was filed in Ottawa County Circuit Court

without any basis in law. The Bush's had an attorney and testimony was presented by both sides. The Bush's defense relied in part on an unpublished Michigan Court of Appeals decision named **City of Flint v Bibbs**, (#52759 (1982) Beasley, Burns, Quinnell). The unanimous decision held such ordinances unconstitutional. But Ottawa County Judge Calvin Bosman, as have others (judges), completely ignored the decision and ordered the Bush's vehicles and other property seized and disposed of if the Bush's did not remove everything within 45 days.

10. The Bush's, pro se, filed a motion for rehearing and stay. While that Motion was pending, but after the 45 days had expired, attorney for the City, Ken Breese, gave permission to the Zoning guru and police to seize all the Bush's vehicles and property outside of buildings on 4 parcels of property, including two that are zoned commercial.

11. A few days later the state Circuit Judge Calvin Bosman denied the motion for rehearing.

12. The Bush's were barred from recovering anything from the vehicles and all the items were either sold or disposed of, including Mr. Bush's tools, etc.

13. The Bush's pro se appealed to the Michigan Court of Appeals on an emergency basis. Relief was denied, one panel judge being, at that time, Chief Judge Bandstra.

14. Mr. Bush ordered the transcripts first by phone and then by mail. The transcripts were never provided. The Michigan Court of Appeals, Judge Bandstra, dismissed the appeal because of lack of transcripts. The Bush's moved for rehearing before a 3 judge panel. That was denied by Bandstra.

15. Subsequently the Bush's appealed to the Michigan Supreme Court, who had established in a prior case a means of securing the transcripts in such a situation. They refused to accept the case.

16. The Bush's petition(ed) the U.S. Supreme Court. They denied certiorari. (See attached.)

17. At about the same time as the petition is being filed (fall winter 2001) with the U.S. Supreme Court the City is coming after the Bush's again with the same type of charges. They resulted in the Bush's having to pay $1200 in fines for having unlicensed vehicles on their properties.

18. Most recently Zeeland filed suit against the Bush's again in order to again seize their vehicles about the time this suit was filed.

19. The Bush's filed the necessary papers to lawfully remove the matter to the jurisdiction of this Court. The papers were sent on November 14, 2002 to this Court, Ottawa County Circuit Court Clerk, and Mr. Breese. Yet none of that prevented Ottawa Circuit Judge Calvin Bosman and attorney Ken Breese from holding a hearing on the November 18, 2002 without the Bush's present and ruling against them.

20. In fact it appears that some federal employee(s) assisted Mr. Breese in getting his unethical way by not filing the Bush's removal until Monday, November 18, 2002. (See record #5)

21. Subsequently, on November 19, 2002, Mrs. Bush was served by two Zeeland Policemen with a 10 page Order and Injunction prohibiting the Bush's from all (out)side use of their properties and demanding they do certain things or pay the City for doing them.

22. Service was also intended for Mr. Bush, but, fortunately, he was not home. Since then Mr. Bush has been virtually barred from his own house, properties and Zeeland in order to avoid the repeated attempts at serving him and thus, hopefully, delay the effective date of the order or at least have a point of argument.

23. Mr. Bush has been reduced to being a fugitive, leaving early in the morning and only returning after dark at night. [H]arassed without mercy.

24. Because of his fugitive status and virtual absence from home, Mr. Bush was unaware of the Notice of Pending Dismissal time line. Last night, 12-4-02, he began going through some papers and found the Notice.

25. I am of the firm opinion, having much experience, that there is no other party or person with anywhere near the ability to harass and harm persons than the government, be it state or local. Zeeland is a government that will harass you out of town or into other situations you would not normally be in. The City of Zeeland has cost the Bush's a great deal of stress, heartache and hardship. Costs they never would have had to bear if they did not live in the City of Zeeland.

26. This is not a simple case. Therefore the Bush's would like to have some competent attorneys handle it from the start to include the correct defendants, issues, perfect the complaint, etc. And, also to give them some relief. In short, we have been totally burned out attempting to find any sliver of JUSTICE in the state (and federal) courts to date. And we have been continually harassed by the City of Zeeland and its highly paid puppets without mercy.

27. I, having studied the law and many many cases, am of the opinion, and as this record reflects, that the State of Michigan cannot be trusted to enforce the laws and Constitution of the State of Michigan, let alone the Federal Constitution. It is my belief that the state courts and agencies, with whom I have had contact, are in the vast majority incompetent and prejudiced against pro se litigants, at the very least.

By /s/ Gerald Bush
Gerald Bush

Subscribed and sworn to before me
this 5th day of December, 2002.

/s/ Lori J. Vander Sloot
(stamped) Lori J. Vandersloot
Notary Public Ottawa County, MI
My Commission Expires Aug 11, 2003

APPENDIX D

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD D. BUSH, et al.,
Plaintiffs,
V.
CITY OF ZEELAND,
Defendant.

Case No. 1:02-ev-565
Honorable Robert Holmes Bell

MEMORANDUM OPINION

This is a civil rights action brought by pro se plaintiffs against the City of Zeeland. Plaintiffs' complaint was filed on August 8, 2002. The complaint is extremely vague and discloses only that plaintiffs contend that the City of Zeeland has acted unconstitutionally with regard to property owned by plaintiffs in Ottawa County. Plaintiffs are not proceeding informa pauperis.

Plaintiffs have failed to effectuate service upon defendant. On November 14, 2002, this court issued a notice of impending dismissal pursuant to Fed. R. Civ. P. 4(m). The notice required plaintiff to effectuate service or to petition the court, showing good cause, for an extension of time in which to do so, no later than December 4, 2002. On December 5, 2002, plaintiffs filed a motion to "stay impending dismissal" and to grant an extension of time to serve defendant. The motion was supported by the affidavit of plaintiff Gerald Bush.

Rule 4(m) of the Federal Rules of Civil Procedure directs the district court to dismiss an action without prejudice if service of the summons and complaint is not made upon defendant within 120 days of the filing of the complaint.

The court may dismiss on its own motion, as long as the court has granted plaintiff previous notice. The rule further instructs the district court to provide additional time for service if there is "good cause" for a plaintiff's failure to effect service within the prescribed 120 days. "The burden is on the plaintiff to establish good cause." 4B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE: CIVIL, § 11 37 at 342 (3d ed. 2002). The cases decided under Rule 4(m) show that good cause will be found when the plaintiffs failure to complete service in a timely fashion is the result of the conduct of a third person (typically the process server), the defendant has evaded service of process or engaged in misleading conduct, the plaintiff has acted diligently in trying to effect service, or there are other mitigating circumstances. *Id.; see, e.g., Habib v. General Motors Corp., 15* F.3d 72, 74 (6th Cir. 1994) (good cause may be shown by sudden and incapacitating physical maladies or reasonable and diligent efforts to complete *service); Ditkof v. Owens-Illinois, Inc.,* 114 F.R.D. 104, 105 (E.D. Mich. 1987) (good cause shown when defendant's conduct lulls a plaintiff into believing that service has been accomplished). If the court finds that good cause exists, the extension must be granted. If good cause has not been shown, the court may still have discretion to grant an extension. *See McCurdy v. American Bd. of Plastic Surgery,* 157 F.3d 191, 197 (3d Cir. 1998) (affirming dismissal of action).

Judged against this standard, plaintiffs' motion and affidavit are utterly insufficient to show good cause. The affidavit does not disclose any effort, however minimal, by plaintiffs to effect service of process on the City of Zeeland. Rather, Plaintiffs are content to recite a long history of alleged "harassment" by the city, dating back ten years, and the details of previous lawsuits in which plaintiffs have been unsuccessful in their efforts to hold the city liable for allegedly unconstitutional conduct. Plaintiffs also attach orders from the Supreme Court of the United States denying

certiorari in a previous case. Mr. Bush now claims to be a "fugitive," a status he has imposed upon himself "in order to avoid the repeated attempts at serving him" with process from the state courts. (Aff., P#22, 23, docket # 7). None of this is remotely sufficient to show good cause. Plaintiffs were obliged to demonstrate reasonably diligent efforts at effecting service or the existence of some mitigating factor impeding service, despite their best efforts. A municipality is not difficult to serve. The court can only conclude that plaintiffs have purposely failed to make service in order to prolong the life of this litigation.

This conclusion is bolstered by plaintiffs' spurious attempt to remove a civil action from the Ottawa County Circuit Court. On November 15, 2002, plaintiffs filed a notice of removal purporting to remove Ottawa County Circuit Court case no. 02-43 822-CZ, a case brought by the City of Zeeland against Gerald and Carolyn Bush seeking injunctive relief. The allegations in the notice of removal (docket# 5) are incomprehensible and fail to allege any ground for removal jurisdiction under 28 U.S.C. § 1441. Plaintiffs do not allege that the claim brought against them in the Ottawa County Circuit Court falls within the district court's original jurisdiction, either because it arises under federal law or because it involves citizens of diverse citizenship and the requisite amount in controversy. Plaintiffs' notice of removal is a patent attempt to impede the progress of a state-court action.

The court concludes that plaintiff has failed to make service within the time allowed by Rule 4(m) and that they have not shown good cause for their failure to do so. In the absence of a showing of good cause, the court has discretion to dismiss the action or to allow further time for service. In light of plaintiffs' demonstrated record of obstruction and delay, the court exercises its discretion in favor of dismissal of this action.

An order will enter dismissing the action without prejudice Pursuant to Rule 4(m) and remanding the removed case to the Ottawa County Circuit Court.

Date: December 11, 2002 /s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD D. BUSH, et al.,
Plaintiffs,
V.
CITY OF ZEELAND,
Defendant.

Case No. 1:02-cv-565
Honorable Robert Holmes Bell

ORDER OF DISMISSAL AND REMAND

In accordance with the opinion issued this date:

IT IS ORDERED that plaintiffs' motion to stay pending dismissal (docket# 6) be and hereby is DENIED for lack of good cause shown.

IT IS FURTHER ORDERED that the captioned case be and hereby is DISMISSED without prejudice pursuant to Fed. R. Civ. P. 4(m).

IT IS FURTHER ORDERED that the matter of *City of Zeeland v. Gerald Bush, et al.*, file no. 02-43822-CZ be and hereby is remanded to the Ottawa County, Michigan, Circuit Court on the ground that the action was removed improvidently and without jurisdiction.

Date: December 11, 2002
/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE

Certified as true copy
Ronald C. Weston, Sr. Clerk
Date: 12-12-02 By /s/ M. Jewell Deputy clerk
U. S. District Court Western District of Michigan

(stamped) TRUE COPY
SIGNED ORIGINAL FILED ELECTRONICALLY
Ronald C. Weston, Sr., Clerk

APPENDIX F

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD D. BUSH, et al.,
Plaintiffs,

Case No. 1:02-cv-565
V. Honorable Robert Holmes Bell

CITY OF ZEELAND,
Defendant.

ORDER DENYING MOTION FOR RECONSIDERATION

By order entered December 11, 2002, this court dismissed the captioned action under Rule 4(m) of the Federal Rules of Civil Procedure for failure to serve the defendants. In the same order, the court remanded to the Ottawa County Circuit Court a civil action removed by plaintiffs improvidently and without jurisdiction. Plaintiffs have filed a motion for reconsideration, which the court will construe as a timely motion to alter or amend judgment filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.

Plaintiffs' motion for reconsideration is not meritorious. In their motion, plaintiffs do not address their failure to serve the defendants or to offer any plausible excuse for their failure to do so. The court again notes that plaintiffs were warned that their action would be dismissed unless proper service were made. (Order of 11/14/02, docket # 4). Furthermore, plaintiffs totally ignore the issue of removal of the state-court action and do not attempt to show that the order of remand was in anyway erroneous. Rather,

plaintiffs' content themselves to criticize the defendants and raise other irrelevancies. Accordingly:

IT IS ORDERED that plaintiffs' motion to reconsider (docket # 12) be and hereby is DENIED.

Date: January 14, 2003

/s/ -Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE

(stamped) True Copy
Signed original filed electronically
Ronald C. Weston Sr., Clerk

APPENDIX G

No. 03-1080
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GERALD D. BUSH, Plaintiff-Appellant,
CAROLYN BUSH, Plaintiff,

v.

CITY OF ZEELAND;
UNKNOWN PARTIES, named as "et al,"
Defendants-Appellees.

September 5, 2003, Filed

NOTICE: NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 28(g) LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28(g) BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

PRIOR HISTORY: Western District of Michigan. 02-00565. R. H. Bell. 12-11-02.

DISPOSITION: Affirmed.

COUNSEL: GERALD D. BUSH, Plaintiff - Appellant, Pro se, Zeeland, MI.

JUDGES: Before: GUY and DAUGHTREY, Circuit Judges; LAWSON, District Judge.

* The Honorable David M. Lawson, United States District Judge for the Eastern District of Michigan, sitting by designation.

OPINION: ORDER

Gerald D. Bush, a Michigan litigant proceeding *pro se* appeals a district court order dismissing his complaint filed pursuant to 28 U.S.C. §§ 1331, 1343, 1651, and 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On August 8, 2002, Bush and his wife, Carolyn Bush ("the plaintiffs"), filed a complaint against the City of Zeeland ("the City") alleging that the City had acted unconstitutionally with regard to property owned by the plaintiffs in Ottawa County. The plaintiffs sought declaratory, injunctive and monetary relief.

The plaintiffs failed to effectuate service upon the City. On November 14, 2002, the district court issued a notice of impending dismissal pursuant to Fed. R. Civ. P. 4(m). The notice required the plaintiffs to effectuate service or to petition the court, showing good cause, for an extension of time in which to do so no later than December 4, 2002. On December 5, 2002, the plaintiffs filed a motion to "stay impending dismissal" and to grant an extension of time to serve the City. The motion was supported by the affidavit of Gerald Bush.

On November 15, 2002, the plaintiffs filed a notice of removal purporting to remove Ottawa County Circuit Court case no. 02-43822-CZ, a case brought by the City against Gerald and Carolyn Bush seeking injunctive relief. The allegations in the notice of removal are incomprehensible

and fail to allege any ground for removal jurisdiction under 28 U.S.C. § 1441.

By order entered December 11, 2002, the district court dismissed the complaint under Rule 4(m) for failure to serve the City. In the same order, the court remanded to the Ottawa County Circuit Court a civil action removed by the plaintiffs improvidently and without jurisdiction. The plaintiffs filed a motion for reconsideration which the district court construed as a timely motion to alter or amend judgment filed pursuant to Fed. R. Civ. P. 59(e). The motion was denied. This appeal followed.

Initially, we note that Gerald Bush is the only appellant properly before the court. Carolyn Bush is not properly before the court and is not an appellant because she neither signed the notice of appeal nor did she proceed through an attorney. See Fed. R. App. P. 3(c); *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 31718, 101 L. Ed. 2d 285, 108 S. Ct. 2405 (1988); *Mattingly v. Farmers State Bank*, 153 F.3d 336, 337 (6th Cir. 1998). This holding does not work a hardship on Carolyn Bush because the appeal lacks merit and the order dismissing the complaint was properly entered by the district court.

We review the district court's dismissal of a complaint for failure to serve the defendant under an abuse of discretion standard of review. *See Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996) (interpreting the predecessor to Fed. R. Civ. P. 4(m)). An abuse of discretion exists when the reviewing court is firmly convinced that a mistake has been made. *See Romstadt v. Allstate Ins. Co.*, 59 F.3d 608, 615 (6th Cir. 1995). A district court abuses its discretion when it relies on clearly erroneous findings of fact, or when it improperly applies the law, or uses an erroneous legal standard. Id. at 615.

Federal Rule of Civil Procedure 4(m) requires the plaintiff to serve the summons and complaint upon the

defendant within 120 days after the complaint is filed. "If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time." Fed. R. Civ. P. 4(m). The 120-day time limit may be extended by the court if the plaintiff demonstrates good cause for failure to timely serve the defendant. Fed. R. Civ. P. 4(m): *Moncrief v. Stone*, 961 F,2d 595, 596 (6th Cir. 1992) (interpreting the predecessor to Fed. R. Civ. P. 4(m)).

Upon review, we conclude that the district court did not abuse its discretion when it dismissed the complaint for failure to serve the City pursuant to Fed. R. Civ. P. 4(m). As pointed out by the district court, the plaintiffs' motion and affidavit were insufficient to show good cause. The affidavit did not disclose any effort, however minimal, by the plaintiffs to effect service of process on the City.

Finally, the remand order at issue here is not reviewable on appeal. Generally, "an order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." 28 U.S.C. § 1447(d). However, because § 1447(d) must be read in conjunction with § 1447(c), *see Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 345, 46 L. Ed. 2d 542, 96 S. Ct. 584 (1976), appellate review of remand orders is prohibited only where the district court remands because it lacks subject matter jurisdiction at the time of removal. 28 U.S.C. § 1447 (c); *see Van Meter v. State Farm Fire & Cas. Co.*, 1 F.3d 445, 450 (6th Cir. 1993) (explaining that the reviewability of a remand order depends on whether the district court had subject matter jurisdiction at the time of removal). Here, the plaintiffs did not allege that the claim brought against them in the Ottawa County Circuit Court fell within the district court's original jurisdiction, either because it arose under federal law or because it involved citizens of diverse

citizenship and the requisite amount in controversy. Thus, subject matter jurisdiction was lacking at the time of removal.

Accordingly, the district court's order is affirmed. Rule 34(j)(2)(C). Rules of the Sixth Circuit.

APPENDIX H

No. 03-1080

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GERALD D. BUSH
Plaintiff-Appellant,
CAROLYN BUSH,
Plaintiff,

v

CITY OF ZEELAND;
UNKNOWN-PARTIES, named as "et al,"
Defendants-Appellees.

FILED
OCT. 23, 2003
LEONARD GREEN, Clerk
(stamped)

ORDER

Before: GUY and DAUGHTREY, Circuit Judges; LAWSON, District Judge.*

Plaintiffs-appellants have filed a motion for rehearing of this court's order of September 5, 2003, affirming the district court's order dismissing their complaint filed pursuant to 28 U.S.C. §§ 1331, 1343, 1651, and 42 U.S.C. § 1983.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. See Fed. R. App. P. 40(a).

The motion for rehearing is thus denied.

ENTERED BY ORDER OF THE COURT
/S/ Leonard Green
Clerk

*The Honorable David M. Lawson, United States District Judge for the Eastern District of Michigan, sitting by designation.

APPENDIX I

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001
William K. Suter
Clerk of the Court
(202) 479-3011

January 14, 2004

Mr. Gerald D. Bush
724 E. Central
Zeeland, MI 49464

Re: Gerald D. Bush
v. City of Zeeland, Michigan, et al.
Application No. 03A585

Dear Mr. Bush:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on January 14, 2004 extended the time to and including March 21, 2004.

This letter has been sent to those designated on the attached notification list.

Sincerely,
William K. Suter, Clerk
By /s/ JS
Jennifer Sutton
Case Analyst

(2)

Supreme Court, U.S.
FILED
JUL 28 2004
OFFICE OF THE CLERK

No. 03-1357

In The
SUPREME COURT OF THE UNITED STATES

GERALD D. BUSH
CAROLYN BUSH
Petitioners,

v

ZEELAND, MICHIGAN
Respondent.

Pro se Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

---

MOTION FOR REHEARING OF PETTION FOR WRIT OF CERTIORARI

By:

Gerald D. Bush
724 E. Central
Zeeland, Michigan
49464
616-772-2398

June 25, 2004

REVISED QUESTIONS

In this case a heightened standard was imposed for extension of time for service, extension was requested based on "good cause," but denied and the case dismissed. Service was not completed and Defendant never filed an appearance, answer or brief. On appeal by right, the court of appeals willfully refused to address the questions and briefed issues.

1. Whether the speech of *pro se* Petitioners on appeal by right was effectively censored by not providing the appeal to which they were entitled - by refusing to address their questions?

2. Whether the deliberately censored speech of *pro se* litigants on appeal by right is as important for the Court to decide as that of "adult businesses" resulting in splits between the circuits, and, if not, why not?

3. Whether service on opposing party who has not been served and has not appeared in lower courts is required?

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REHEARING OF PETITION FOR WRIT OF CERTIORARI

Petitioners move for rehearing of their writ of certiorari seeking review of the (their censored appeal) totally inadequate and unjust decisions of the 6th Circuit Court of Appeals and the decisions of the District Court of the Western District of Michigan. Petitioners believe they did not receive the appeal to which they are entitled by the Constitution, laws and court decisions and that the intent has been to suppress their Speech, which supposedly is protected by the First Amendment, and other supposedly "protected" rights.

JURISDICTION

Petitioners rely in part upon their jurisdiction statement in the Petition. The petition was denied on June 1, 2004. The motion is timely if mailed via U.S. Postal Service within 25 days. Rule 29, 44. However, if since it is due on a Sat. June 26, 2004, it is timely if mailed on Monday, June 28, 2004. 28 USC 2107 and Rule 30(1) apply.

CONSTITUTION, LAWS, & RULES INVOLVED

First Amendment

"Congress (and the courts?) shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for redress of grievances."

FRCP Rule 4(m) Time Limit for Service

"If service of the summons and complaint is not made upon a defendant within 120 days after filing of the complaint, the court, upon motion, or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; *provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.*" (emphasis added. Balance not relevant.)

FRAP Rule 3 Appeal As of Right - How Taken
Rule 3(c)(2) "A *pro se* notice of appeal is considered filed on behalf of the signer *and the signer's spouse* and minor children (if they are parties), unless the notice clearly indicates otherwise." (emphasis added)

SUMMARY OF THE CASE

This case was deliberately obstructed from being decided on the merits by the district court and court of appeals, but at its heart this is a property rights case. Respondent has created oppressive zoning and other ordinances that evade fair and just review and it unequally and selectively enforces them. The record reveals the Respondent and its agents have long been attempting to force the Bushs out of town because they have dared to fight city hall in court and demonstrate their multiple violations of law and Constitution. (See ***Doe v Miller***, 289 F Supp 2d 844 (DC IA, 2004) penalty of banishment from community is unconstitutional; See Pet. 5a, Plaintiffs' Affidavit (Aff.) at #6, 7, 25.)

As part of its plan of action Respondent has repeatedly prosecuted Petitioners for violation of its unconstitutional zoning ordinances, etc. and their biased state judges have always ruled in their favor and/or obstructed justice, even though an unpublished Michigan Court of Appeals case found such ordinances unconstitutional. (***Flint v Bibbs***, #52759 (1982); See Pet. Aff. at 6a, #9) Respondent and Michigan judges pay ***Bibbs*** and other authority no heed. (See ***Michigan v Defillippo***, 443 US 31, 41 (1979) J. Blackmum concurring - "the ordinance itself could *perpetually evade constitutional review*." emphasis added) The Bushs count these malicious prosecutions as bad faith, harassment and conspiracy with biased pro government state judges, evading controlling precedent they do not personally like.

After many such prosecutions, Respondent stole hundreds of items of the Bushs personal property stored outside of buildings under guise of zoning and a civil nuisance suit in conspiracy with another complicit state judge. Their appeals were obstructed by other state judges and officials. (See Pet. Aff. 6a-8a)

This civil rights suit was intended to enforce rights under the Constitution and recover for Respondent's theft of hundreds of items of personal property of the Bushs unlawfully seized on August 9, 1999. (See Pet. App. A at 1a) However, the federal district judge objected to Petitioners' inditing affidavit (speech), as demonstrated by his refusal to recite it, is biased in Respondents favor and against nonattorneys and ruled accordingly. So also is the Court of Appeals, except it also favors the district judge over these nonattorney dumbbells.

The Bushs were being harassed during the 120 days for service and especially in the last 20 days of the time to serve. (See Pet. Aff. at 8a-9a) The district court denied their motion to extend time and dismissed the suit and denied reconsideration. (Pet. App. D 10a, E 14a, F 15a)

Respondent's second alleged nuisance suit and illegally gotten order (after removal, See Pet. Aff at 8a) resulted in the theft of more of Petitioners' property in 2003, the trumped up arrest and assault of Mrs. Bush on felony charges, the assault of Mr. Bush, the destruction of one of their houses, the loss of control of another, and large unnecessary and unjustified expenses. (See Pet. p 11-13)

1. THE IMPORTANT QUESTION OF WHETHER THE NONATTORNEY APPELLANTS' SPEECH WAS CENSORED ON APPEAL BY RIGHT, IN VIOLATION OF THE FIRST AMENDMENT AND OTHER RIGHTS, SHOULD BE DECIDED BY THIS COURT.

This Court has just decided a First Amendment case involving the rights of "adult" businesses, of which it has

decided many cases. (See *Littleton, Col. v Z.J. Gifts*, O2-1609 (June 7, 2004) and cases cited.) However, it has not decided the First Amendment rights of any nonattorney *pro se* litigant that Petitioner is aware of. The time and case are ripe. A comparison between the rights of "adult businesses" and *pro se* litigants would be enlightening.

In ***Littleton***, this Court decided the case because of "lower court uncertainty on this issue" and listed 7 cases. (Part I) But how many can it list involving the First Amendment rights of *pro se* (meaning here nonattorney, in other words the poorest of litigants) litigants?

In Littleton, Z.J. Gifts, (and other adult businesses) have protected First Amendment "*safeguards designed to obviate the dangers of a censorship system.*" ***Littleton***, quoting ***Freedman*** (Part II (A) (emphasis added). (Obviously cities, states and Congress may not censor speech, but what about judges?) Three safeguards are then listed. Number 2 is "burden of proof rules favoring speech" and #3 "a `procedure' that will `*assure a prompt final judicial decision*, to minimize the deterrent effect of an interim and possibly erroneous denial of a license." Id., at 58-59 (***Littleton*** court emphasis).

(It is presumed by Petitioners that the Court meant the "prompt final judicial decision" is *on the merits*, not some evasive procedural issue.)

This case involves a "final judicial decision" on appeal, *but not on the merits* of the issues raised by questions and briefing. And it was no error. Therefore, Petitioners believe the court of appeals censored their First Amendment and other Constitutional Rights. (Due Process, Equal Protection, Privilege of appeal, and Justice.)

The evidence of that the Court will soon see for itself. Following this discussion are the questions that were raised and briefed. But as the Court can see from comparing them to the 6th Circuit opinion, they were all ignored and a decision entered reflecting the courts will, not the law or Constitution. (Mr. Bush has found this to be a common practice.)

Littleton speaks of the "*unconstitutional suppression of protected speech.*" (Part II A); And "In our view, Colorado's ordinary judicial review procedures suffice *as long as the courts remain sensitive to the need to prevent First Amendment harms . .*" (Part II B); "There is *no evidence before us of any special Colorado court-related problem* in this respect. And were there some problems, *federal remedies would provide an additional safety valve.* See Rev. Stat. Sec 1979, 42 USC sec 1983."; "denial (of decision on the merits in this case) meant complete censorship."; "using their judicial power *to prevent significant harm to First Amendment interests . .* " (Part II B)

The question Petitioners ask is whether this Court is willing to follow the above standard when, as here, the 6th Circuit clearly censors the First Amendment rights of *pro se* appellants - Petitioners?

In ***Legal Services Corp. v Velazquez***, 531 US 533, 149 L Ed 2d 63, 121 S Ct 1043 (2001) this Court overruled an act by Congrsss on First Amendment grounds holding that it had insulated from judicial review certain types of cases, arguments and speech by attorneys. Do the same standards and safeguards apply to courts who censor speech?

The "evidence" of censorship follows. The following few questions were raised as numbered, argued and briefed in the Petitioners' appeal by right to the Court of Appeals, but never addressed, or decided. Therefore, the Petitioners were denied the appeal by right to which they are entitled. See ***Adkins v E.I.Dupont***, 335 US 331, 69 S Ct 85; 93 L Ed 43 (1948) holding that a poor appellant is "entitled" to "appellate review of the issues the district court decided against her . . " Anything less ". . would frustrate the basic purpose of the statute." (US at 340). See also ***Bounds v Smith***, 430 US 817, 822 (1977). (Note: Mr. Bush has had many appeals *pro se* where he has been censored and denied the Due Process review and decisions to which he has been entitled. Of these, few could be errors, but are rather willful obstruction of justice, as he believes is evident here.)

Questions

*1. Whether district court must accept at face value and as true affidavits provided by the Plaintiffs in support of extension of time and injunction that contain a many year history of substantial and continual bad faith, wrongs and constitutional violations and history of inability to find justice in state courts? (See Appellants' Brief at p 10-15)

*2. Whether the district court erred by refusing to extend time for service of this *pro se* civil rights case and by dismissal of the case? (See Appellants' Brief at p 15-18)

*3. Whether the district court erred calculating the time available to file a motion to extend time to serve Defendants? (See Appellants' Brief at p 15-16)

*4. Whether the District Court erred imposing a heightened and excessively restrictive standard for extension of time on *pro se* plaintiffs exceeding the requirements of Rule 4(m) and therefore being unjust in violation of Rule 1, Due Process and Equal Protection rights and 28 USC 1654? (See Appellants' Brief at p 16-17)

*5. Whether removal was reasonably appropriate under the statutes as understood by the *pro se* plaintiffs and was erroneously remanded when record is properly viewed? (See Appellants' Brief at p 18-20)

*6. Whether state court judgment is void because made after removal, in absence of jurisdiction; in violation of federal law; in violation of Supreme Court precedents; in violation of the Supremacy Clause? (See Appellants' Brief at p 20-22)

*7. Whether *pro se* plaintiffs had a right to have district court ruling and ruling in their favor on their motion for injunctive relief? (See Appellants' Brief at p 18-22)

*8. Whether rulings, absence of rulings and comments of the district [court] in light of the record and this appeal reveal bias favoring government Defendant and opposing *pro se* plaintiffs, and if so, whether remand to a different unbiased court is required? (See Appellants' Brief at p 22-24)

*9. Whether there is any federal forum and relief from unethical state government attorneys for *pro se* litigants when the state will not provide any? (See Appellants' Brief at p 24-28)

By simply reviewing the short court of appeals decision it should be very clear to the Court that the questions marked by (*) were not answered. (See court of appeals decision at Pet. App. 17a-21a). Furthermore, since the disposition of the case does not track with the issues raised or even recite relevant facts, it seems evident that it is a decision based on judicial "will" instead of facts and law. Indeed, the appeals court decision follows the district court decisions like a dog on a leash.

Next, on Motion for Rehearing, Petitioners raised the following few questions, and likewise, argued and briefed them, but rehearing was denied.

1. Whether the district court had subject matter jurisdiction [of the removed state case] appears vague, arbitrary, and capricious and therefore violates the First Amendment and Due Process of law?

2. Whether the 6th Cir. panel erred ~~in~~ by not accepting as truthful all the allegations and affidavits of the plaintiff-appellants in the record on appeal,

since there was no motion to dismiss because Defendants never made an appearance and because the judge dismissed *sua sponte*?

It is absolutely clear that none of these questions were answered by the court of appeals, since they did not rehear the case. See Pet. App. 22a.

Furthermore, Appellants wonder if the record was ever sent to the court of appeals. (*Pro se* appellants have no way to assure that the record is sent before their cases have a decision.)

If this Court has any doubts about this federal judge's intent to censor *pro se* speech, the Court should review ***Bush v Zeeland Bd of Educ.***, 1:01-CV-672 (W.D. Mich 2003) 2003 U.S. Dist. 3788 and see the extreme, horrific and unjustified sanctions imposed upon Mr. Bush solely for being involved in state and federal lawsuits attempting to protect his and others Constitutional rights *pro se*.

The bottom line is Petitioners would like this Court to provide the judicial "determination" for them, as it described the rights in ***Littleton*** for the First Amendment Speech rights of "adult businesses" above.

CONCLUSION

Now this Court must decide if nonattorney appellants are entitled to one fair, just , uncensored appeal by right. Petitioners would remind the Court of the truthful statement of Chief Justice Burger:

> "The *potential danger to the citizenry* from the malice of thousands of prosecutors and judges is at once more pervasive and less open to constant, public scrutiny than the actions of a President." ***Nixon v Fitzgerald***, 457 US 731, 759 (1982) Fn 2, (Chief Justice Burger concurring). (emphasis added)

(See sworn statement of Mr. Bush. p 9)

For the above reasons, Petitioners respectfully request that this Motion for Rehearing of their Petition for Writ of Certiorari be granted and their rights "safeguarded" by the Constitution be enforced. (***Littleton, supra.***)

June 25, 2004

Gerald Bush
724 E. Central
Zeeland, Mich. 49464

Carolyn Bush

Statement According To 28 USC 1746

Based on evidence in my cases, information and belief, I am convinced beyond a reasonable doubt that the vast majority of the state and federal judges I have had cases with deliberately censor my speech, obstruct justice, and are biased against me in favor of state and local government and their attorneys and state judges.

"I declare(or certify, verify, or state) under penalty of perjury that the foregoing is true and correct."

Executed on June 25, 2004 _____
Gerald Bush

CERTIFICATION OF PETITIONER

Petitioner states and affirms that this motion for rehearing complies with the intent of Rule 44(2) and is presented in good faith and not presented to delay and is consistent with this Court's decisions on rehearing.

(Fn Petitioners are seeking to enforce their civil rights. They have no reason for or advantage in delay, since the case was dismissed at the district court and they are just trying to get back to square one. Petitioners are still only seeking "Justice".)

June 25, 2004 _____
Gerald Bush